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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CRIMINAL APPEAL NO. 104 OF 2001

MEMORANDUM OF CRIMINAL APPEAL U/s 374 OF Cr.P.C.

APPELLANT (In Jail) :- Suraj singh S/o Shivx lal sing mawar Aged about 30 years.occuption Agricultarist R/o Baigan DMhiKatela para, Thana Sarangarh,Dist/Raigarh

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Filed on 23.1.2001 by Shri Advocate R. to AR

VERSUS

NON APPELICANT :- State of Chhattisgarh throung Dist Magistrate Raigarh.

APPEAL U/s 374 OF Cr.P.C.

(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 104/2001

Suraj Singh

Vs.

State of Chhattisgarh

JUDGMENT

For consideration

Sd/-
Judge
3-7-2006

Hon'ble Shri Justice Dhirendra Mishra,J

I agree

Sd/-
DHIRENDRA MISHRA
Judge

Post for 4 -7-2006

Sd/-
Fakhruddin
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 104/2001

Suraj Singh

Vs.

State of Chhattisgarh

Coram: **Hon'ble Shri Fakhruddin and**
Hon'ble Shri Dhirendra Mishra, JJ

Present: Shri Saurabh Dangi, counsel for the appellant.
Shri Sudhir Bajpai, Dy. Govt. Advocate, for the State.

JUDGMENT

Per Fakhruddin,J.

Heard learned counsel for the parties.

2. The appellant has preferred this appeal against the judgment delivered on 24-11-2000 in Sessions Trial No.49/99 by the IIth Additional Sessions Judge, Raigarh, whereby he has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and fine of Rs. 500/-, in default of payment of fine, to further undergo R.I. for 4 months, for committing murder of his brother Shashibhushan.

3. Briefly stated the prosecution story is that PW-1 Shivlal had four sons. Deceased Shashibhushan, accused Suraj, Jwala and Digambar. Accused Suraj, deceased Shashibhushan, Jwala were living with the father PW-1 Shivlal. Suraj was earning separately. Five months before the date of incident, all the four brothers had given a loan to their brother-in-law Digri (PW-5). The deceased took back Rs.2000/- from Digri without disclosing this fact to the accused. When Suraj came to know this fact he got annoyed with Shashibhushan and used to remain

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quiet and inspite of asking he was not speaking much. On 23-4-1998 (Thursday) they took meals in the night. Shashibhushan slept in the courtyard and adjoining to him Suraj, Guddu @ Kailash (daughter's son of Shivlal) also slept. Wife of Deceased Shashibhushan namely Basanti was sleeping in her room. Shivlal was sleeping inside the room near the door. On 24-4-1998 at about 4.00 a.m. Shivlal heard the sound of assault – *khach khach*, then he went to courtyard and saw that Shashibhushan was lying dead and he had injuries on his neck and blood was oozing. Accused Suraj was not there in the adjoining cot. He noticed that Suraj was going from backside towards jungle. Then Shivlal went to Bengandih and told the incident to Kotwar Jagdish and went alongwith Jagdish to Police Station and lodged the First Information Report (Ex.P/1). J.P. Singh (PW-14) recorded the FIR and merg No. 20/1998 (Ex.P/26). The Investigating Officer went to the spot and prepared spot map (Ex.P/2). Notice (Ex.P/5) was given to Panchas and panchnama (Ex.P/17) of the dead body was prepared. Dead body was sent for post mortem. Post mortem was conducted by Dr. R.P. Patel (PW-7) and the report is Ex.P/10. The deceased sustained six injuries. The accused was arrested and Ex.P/13 memorandum was recorded. On his memorandum blood stained Tangi as per Ex.P/14 was seized. The plain earth and blood stained earth was seized. A cotton Lungi from the person of the accused was seized as per Ex.P/18 and was sent to FSL. After the investigation challan was filed.

4. The accused/appellant abjured the guilt and contended that he has been falsely implicated.

5. Learned Trial Judge relying upon the material on record convicted and sentenced the accused/appellant as stated above against which the appellant has preferred this appeal.

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6. Shri Saurabh Dangi, learned counsel appearing for the appellant, assailed the findings recorded by the learned Trial Court. He contended that there is no legal and reliable evidence against the appellant to connect him with the offence. He further contended that so far as the recovery of the Tangi is concerned, it was seized from the spot and it is not a recovery. Counsel further contended that the prosecution has failed to prove any motive in the present case and the appellant has been convicted on the notions and surmises and on the basis of the conduct of the appellant, which cannot be the sole basis for conviction.

7. Shri Bajpai, learned counsel appearing for the State, on the other hand supported the judgment and contended that the appellant has rightly been convicted.

8. We have heard the learned counsel for the parties and gone through the material on record. The incident had taken place in the house admittedly where PW-1 Shivlal, deceased Shashibhushan and accused Suraj were sleeping. PW-1 Shivlal heard the sound of assault – *Khach Khach.* He came out of the house and saw that his son Suraj was going towards the jungle. He followed and enquired from him as to what have you done. The accused remained quiet. Thereafter he went to Kotwar Jagdish (PW-5) and alongwith him went to the Police Station and lodged the FIR. In the FIR (Ex.P/1) he has stated that he saw the deceased injured, the blood was oozing out. He did not find Suraj there and saw that Suraj was going from backside towards jungle.

9. Peculiar fact which has emerged in the present case is that the FIR has been lodged by PW-1 Shivlal who is father of the deceased Shashibhushan as well as father of accused Suraj. The evidence in the present case consists of Shivlal (PW-1) and the circumstances stated by

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him. So far as Shivlal is concerned, his evidence has been considered by the learned trial Judge in para 20 of the judgment.

10. Shri Saurabh Dangi, learned counsel appearing for the appellant vehemently argued that the evidence of P.W. 1 Shivlal is unreliable and untrustworthy. He contended that he is not eye-witness to the incident and on assumption, he reached to the conclusion that the appellant is the person who has killed. It is also contended that there is no motive.

11. We have carefully considered the evidence of P.W. 1 Shivlal. He is father of the accused as well as father of the deceased. Both, the accused and the deceased are sons of P.W. 1 Shivlal. His presence on the spot is not disputed. He was sleeping in the nearby room. He had heard the sound of *Khach Khach* and initially he pretended that it is not a serious matter but when the sound stopped, he got up from the cot and then immediately found Suraj leaving the place. When he questioned to Suraj as to what did you do, he remained quiet unusually and did not answer. When he asked where are you going, he replied that he was going Saranggarh. To us, he is the person who has given truthful account. He is the person who is the complainant as well as father and being father of the deceased and accused, his conduct is very natural. He has deposed what was observed and seen by him. Here Sections 6, 7 and 8 of the Indian Evidence Act is relevant and quoted below:-

> "6. **Relevancy of facts forming part of same transaction.**- Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.
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> 7. **Facts which are the occasion, cause or effect of facts in issue.**- Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they

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happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

8. **Motive, preparation and previous or subsequent conduct.**- Any act is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

12. Section 6 of the Evidence Act is an exception to the rule of evidence that hearsay evidence is not admissible. The test for applying the rule of res-gestae is that the statement should be spontaneous and should form part of the same transaction, ruling out any possibility of conviction. In ***Gentela Vijayavardhan Rao Vs. State of Andhra Pradesh*** reported in **A.I.R.-1996-S.C.-2791** para-15, it was held as follows:

> "Section-6 of the Evidence Act and some of the succeeding sections embody the rule of admission of evidence relating to what is commonly known as res gestae. They are in the nature of exception to "hearsay" rule. Section-6 permits proof of collateral statements which are so connected with the facts in issue as to form part of the same transaction. Whether the statement made by a witness was a part of the same transaction or not is to be considered in the light of the circumstances of each case. The principle is that it should be so intimately connected with the fact in issue as to be a spontaneous utterance inspired by the excitement of the occasion or a spontaneous reaction thereof, there being no opportunity for deliberately fabricating the statement. In other words, the statement which is a part of res-gestae does not narrate a past event, but it is the event itself speaking through a person thus excluding the possibility of any design behind it."

13. Now in the instant case, P.W. 1 Shivlal was sleeping. As stated by him, he usually wakes up in the morning at 4.00-5.00 A.M. He got up and heard the sound. He initially thought that it was a result of

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mimicry or otherwise but when sound stopped, he realized that something has happened. He came out and saw that his son Shashibhushan was lying drenched with blood and saw his another son Suraj leaving the spot and going towards Jangle. He followed watching his conduct. He questioned him, the accused-son was silent. Others at the spot were child and lady. Whatever he has done and narrated is normal. Whatever he has stated is corroborated by his conduct like prompt lodging of First Information Report, naming his son. We do not find anything in the cross-examination demolishing his version. On the other hand, what has come in the evidence is that he has stated to the police that it is Suraj who has killed Shashibhushan. A suggestion was made to him that he has made allegation against the accused at the behest of Jagdish and Digambar, but he denied. Nothing has been pointed out that he has any enmity with Suraj. We do not find any material.

14. The accused has also not stated that P.W. 1 has any grudge against him. On the contrary, in reply question No. 3 under Section 313 of Cr.P.C. that P.W. 1 has said that in the night all persons took meals, Jwala went to see the field and Shashibhushan, Basanti, Suraj and Pilibai were in the house, he stated that it is true. The question No. 5 under Section 313 of Cr.P.C., was put to accused that P.W. 1 has stated that in the night at 4.00 AM sound of Dham Dham came from Shashibhushan and he though that it is as a result of mimicry, what is your saying, the accused replied that it is true. He further accepted that Suraj and Pilibai were sleeping and Shashibhushan went to walk. Question No. 7 is about the conduct of the accused. The question was asked that on asking by P.W.1, he kept quiet, is it true, he replied that it is true. When it was asked that is it true that he was asked by P.W. 1

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where he was going, he replied that he was Going to Sarangarh, accused replied that it is true.

15. In our opinion, the P.W. 1 is truthful witness and whatever he has deposed, they are not conjectures and surmises. He has described what had happened in the night. These facts stated by him are relevant because they form part of the same transaction. They are coming from the mouth of the father and that of the deceased. They are relevant under Sections 6, 7 and 8 of the Indian Evidence Act as he has stated about the previous and subsequent conduct of the accused.

16. The learned trial Judge had the occasion to watch the demeanor and it has relied upon the conduct of the P.W.1. We have also gone through the evidence on record and of the considered opinion that his evidence is not just based on conjectures and surmises but same is such which in totality establishes beyond reasonable doubt that it is Suraj who had killed Shashibhushan.

17. Learned counsel for the appellant relied upon the judgment of Hon'ble Supreme Court in the case of State of Orissa –v- Babaji Charan Mohanty and another reported in (2003) 10 SCC 57 and referred to para 17. Argument is that the conduct of the accused persons after the incident had taken place may be very unnatural and creates a strong suspicion against them; but, that by itself is not sufficient to convict the accused, especially when no strong motive to put an end to the life of a son/brother is made out. In that case, P.W. 1 was wife and she deposed, which was not relied upon. There were some discrepancies and other circumstances were brought by the prosecution. In the instant case, nothing has been pointed out to discredit the evidence of P.W. 1. Each case has to be judged on its own facts.

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18. Learned counsel vehemently argued that the P.W. 1 was the sole witness. He relied on the decision of Hon'ble Supreme Court in the case of Joseph –v- State of Kerala reported in (2003)1 SCC 465 and contended that where there is a sole witness to the incident his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by the other witnesses or evidence as recorded. It is further contended that Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. But at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. If the evidence of sole witness is such on which implicit reliance can be placed, conviction can be based on it. We have gone through the evidence time and again and found that his testimony is wholly reliable. So far as eyewitness related to deceased as well as accused is concerned, in the case of Prem Sagar vs. Dharambir and others reported in (2004) 1 SCC 113 the Supreme Court held that in such a case there was no reason as to why he would falsely implicate the accused person. It is the assurance or persuasiveness of the evidence which inspires confidence.

19. We have minutely gone through the evidence of P.W. 1. There is nothing to rebut the same. Circumstances have been mentioned in the evidence. The injuries have been found in post mortem and the autopsy conducted by P.W. 7 Dr. R.P. Patel and report is Ex. P-10. So the evidence of father is also corroborated by medical evidence. Evidence is

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such which itself is sufficient. It is corroborated by immediate lodging the F.I.R. where circumstances have been mentioned. He is not a tutored witness also.

20. Having considered the facts and circumstances of the case and material on record and in view of the evidence of record, which has been relied upon by the trial Court and discussed hereinabove, we are of the considered opinion that the finding, conviction and sentence passed by the trial Court do not suffer from any infirmity, which may call for any interference by this Court in its appellate jurisdiction.

21. Appeal fails and is dismissed.

22. Before parting, this Court very much appreciates the assistance of Shri Saurabh Dangi, learned counsel appearing for the appellant about thorough preparation of the case and meticulous arguments advanced.

Sd/-
Fakhruddin
Judge

P/-

Sd/-
DHIRENDRA MISHRA
Judge